

U-7C
04/18/11

**AFSCME MEF/CEO AND CITY OF SAN JOSE
MEF & CEO JOINT BARGAINING CONTRACT NEGOTIATIONS 2011
PACKAGE PROPOSAL B**

Rationale

This Union counter, Package Proposal B is presented to the City in an attempt to reach a tentative agreement and lead to eventual settlement on new contracts for both the Confidential Employees' Organization (CEO) and the Municipal Employees' Federation (MEF).

The Union remains steadfast in its firm commitment to work with the City to craft a respectable new contract. The Union took great strides in presenting its initial Package Proposal "A" on April 4, and was informed upon receipt that the proposal provided a lot of what the City had demanded.

Once again the Union has stepped-up and crafted a counter proposal that is indicative of our willingness to deal with all of the pressing issues, ensure that the City of San Jose continues to provide efficient and effective services beneficial to our community, and remains a great place to work. The Union proposal ensures that the City does not incur any unnecessary costs, and simultaneously acknowledges that it remains problematic to place the burden of remedying the situation on the backs of the lowest-paid City workers. The Union further remains unconvinced that the City has explored all possibilities of cost-containment.

This Union counter proposal includes the following:

- *A three (3)-year Agreement that provides ample time for the City leadership to step-up and develop real solutions to financial problems.*
- *Salary and wage cuts that meet the request by the City leadership, along with supplemental cuts through percentage reduction between salary steps.*
- *Increased employee contributions toward health benefits.*
- *Improved Safety procedures that will protect the City from unnecessary costs.*
- *Clarification and improvement to layoff procedures and dispute resolution thereby allowing City to work effectively and retain/maintain current services and quality staff.*
- *Equal shifting of the cost of the public transit voucher (Eco pass) to both the City and the employee; with additional expansion of the collective benefit of the program to the employee's family, thereby supporting the City's pledge to reduce its carbon footprint through continued and expanded use of local public transit.*
- *Incorporation of current side letters to maintain good programs and review procedures.*

The Union therefore presents this package proposal and hopes that in accepting it the City will seize this opportunity to step-up, show leadership, and commence the work of rebuilding and strengthening rather than further depleting services and detrimentally affecting lives of the employees and community.

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PERIOD OF MEMORANDUM OF AGREEMENT

Term of Contract:

Three (3) years

MEF – July 1, 2011 – June 30, 2014

CEO – September 18, 2011 – September 17, 2014

(See Attached – MEF/CEO Counter Proposal to City)

WAGES AND SALARY STEP STRUCTURE

As proposed April ¹⁸4, 2011 (See Attached – MEF/CEO Counter Proposal to City)

OVERTIME CALCULATION

As proposed on ^{April 18}March 21, 2011 (See Attached – MEF/CEO Counter Proposal to City)

HEALTH AND DENTAL IN LIEU

As proposed on April 4, 2011 (See Attached – MEF/CEO Counter Proposal to City)

SICK LEAVE AND SICK LEAVE PAYOUT

As proposed on April 4, 2011 (See Attached – MEF/CEO Counter Proposal to City)

HOLIDAY CLOSURE

As proposed on April 4, 2011 (See Attached – MEF/CEO Counter Proposal to City)

SAFETY

As proposed on April 18, 2011 (See Attached – MEF/CEO Counter Proposal to City's Package Proposal "B")

GRIEVANCE PROCEDURE

As proposed on April 18, 2011 (See Attached – MEF/CEO Proposal to City, including Counter Proposal to City's Package "B" on Cost of Requesting List of Arbitrators)

DISCIPLINARY ACTION

As proposed on March 14, 2011 (See Attached – MEF/CEO Proposal to City)



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VACATION LEAVE

As proposed on March 21, 2011 (See Attached – MEF/CEO proposal)

UNION RIGHTS

As proposed on March 21, 2011 (See Attached – MEF/CEO proposal)

ANNUAL PERFORMANCE EVALUATION

As proposed on April 4, 2011 (See Attached – MEF Proposal to City)

WORKING IN A HIGHER CLASSIFICATION

As proposed on April 4, 2011 (See Attached – MEF/CEO Proposal to City)

CALL BACK AND STANDBY PAY

As proposed on April 4, 2011 (See Attached – MEF Proposal to City)

LAYOFF (INCLUDING THE LAYOFF DISPUTE RESOLUTION PROCESS)

As proposed on April 18, 2011 (See Attached – MEF/CEO Proposal to City)

SUBSIDY FOR PUBLIC TRANSIT

As proposed on April 18, 2011 (See Attached – MEF/CEO Counter-Proposal to City
Package Proposal “B”)

FULL UNDERSTANDING, MODIFICATION AND WAIVER

As proposed on April 4, 2011 (See Attached – MEF/CEO Proposal to City)

This proposal is submitted in an attempt to reach a settlement. In the event the proposal is not accepted, the Union reserves the right to modify, amend, withdraw, and/or add proposals.

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AFSCME COUNTER-PROPOSAL – PERIOD OF MEMORANDUM OF AGREEMENT

Proposed MEF language:

ARTICLE 2 PERIOD OF MEMORANDUM OF AGREEMENT

- 2.1 This Agreement shall become effective July 1, 2008 2011 except where otherwise provided, and shall remain in effect through June 30, 2011 2014. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties. Upon ratification by the Union of the Memorandum of Agreement and approval by the City Council, the City will provide the Union within thirty (30) days after both events have occurred, an electronic draft copy in MS Word and portable document file (PDF) format of the Memorandum of Agreement. ~~Three hundred~~ Fifty (300) (50) copies of this Agreement, as originally executed, shall be printed for the Union and distributed as soon as practical. ~~The costs of such printing shall be shared equally by the parties, unless the printing of such Agreements are reproduced utilizing City facilities, in which case the City shall bear the cost of such printing.~~ Additionally, the City will provide email notification to all MEF represented employees at the time a new successor Agreement will be posted on the Internet and City's intranet.
- 2.2 It is the mutual desire of the parties to conclude the meet and confer process as early as possible prior to the expiration of this Agreement. Therefore, it is agreed that the Union shall exert every reasonable effort to submit any proposed changes or additions to this Agreement on or before April 1, 2011 2014. The City agrees to begin the meet and confer process as soon thereafter as is reasonably possible.

Proposed CEO language:

ARTICLE 3 PERIOD OF MEMORANDUM OF AGREEMENT

- 3.1 This Agreement shall become effective September 21 18, 2008 2011, except where otherwise provided, and shall remain in effect through September 17, 2011 2014. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties. Fifty ~~Twenty~~ (50) (20) copies of this Agreement, as originally executed, shall be printed for the Employee Organization. ~~The costs of such printing shall be shared equally by the parties, unless the printing of such Agreements are reproduced utilizing City facilities, in which case the City shall bear the cost of such printing.~~ The City will provide email notification to all CEO represented employees at the time a new successor Agreement is posted on the Internet and City's intranet. Upon ratification by the Union of the Memorandum of Agreement and approval by the City Council, the City will provided the Union within thirty (30) days after both events have occurred, an electronic copy in MS Word and portable document file (PDF) format of the Memorandum of Agreement.



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- 3.2 It is the mutual desire of the parties to conclude the meet and confer process as early as possible prior to the expiration of this Agreement. Therefore, it is agreed that the Employee Organization shall exert every reasonable effort to submit any proposed changes or additions to this Agreement on or before August 1, ~~2011~~ **2014**. The City agrees to begin the meet and confer process as soon thereafter as is reasonably possible.
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AFSCME COUNTER-PROPOSAL – WAGES AND SALARY STEP STRUCTURE

Proposed MEF language:

~~12.1 Wages 2008-2009. Effective June 29, 2008, all salary ranges for employees holding positions in classifications assigned to MEF (Union Codes 051/05 and 052/07) shall be increased by approximately 3.75%. The 2008-2009 salary ranges are listed in Exhibit I and Exhibit II and shall remain in effect until June 27, 2009.~~

~~12.1.1 Employees in the following classifications will receive a 5.0% special market adjustment for a total of a 8.75% increase including the 3.75% general wage increase effective June 29, 2008:~~

~~1187—Crime and Intelligence Analyst
1188—Crime and Intelligence Analyst (PT)
1186—Senior Crime and Intelligence Analyst~~

~~12.1.2 Employees in the following classifications will receive a 2.0% special market adjustment for a total of a 5.75% increase including the 3.75% general wage increase June 29, 2008:~~

~~1547 Buyer I
1542—Buyer II
1543—Senior Buyer
3782—Survey Field Supervisor
2443—Supervising School Crossing Guard~~

~~12.1.3 Employees in the following classification will receive a .17% special market adjustment for a total of a 3.92% increase including the 3.75% general wage increase effective June 29, 2008:~~

~~1618—Contract Compliance Specialist~~

~~12.2 Wages 2009-2010. Effective June 28, 2009, all salary ranges for employees holding positions in classifications assigned to MEF (Union Codes 051/05 and 052/07) shall be increased by approximately 1.50%. The 2009-2010 salary ranges are listed in Exhibit I and Exhibit II and shall remain in effect until June 26, 2010.~~

~~12.3 Wages 2010-2011. Effective June 27, 2010, all salary ranges for employees holding positions in classifications assigned to MEF (Union Codes 051/05 and 052/07) shall be increased by approximately 2.0%. The 2010-2011 salary ranges are listed in Exhibit I and Exhibit II and shall remain in effect until June 30, 2011.~~

~~12.4 Wages for part time employees. Employees assigned to part time classifications shall be paid an hourly rate equivalent to the hourly rate for the same full time classifications.~~



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- 12.1 Effective July 1, 2011, all salary ranges for employees holding positions in classifications assigned to MEF (Union Code 050/051/052) shall be decreased by 10%. This will result in the top and bottom of the range of all classifications represented by MEF being 10% lower. All employees will receive a 10% base pay reduction.**
- 12.1.1 During Fiscal Year 2011-2012, eligible employees in MEF shall receive nine (9) paid time off (PTO) days. Employees shall receive three (3) PTO days at the beginning of each quarter, with the exception of the final quarter. The PTO days must be used by the end of Fiscal Year 2011-2012 or they shall be lost to the employee.**
- 12.1.2 During Fiscal Year 2012-2013, eligible employees in MEF shall receive nine (9) paid time off (PTO) days. Employees shall receive three (3) PTO days at the beginning of each quarter, with the exception of the final quarter. The PTO days must be used by the end of Fiscal Year 2012-2013 or they shall be lost to the employee.**
- 12.2 Effective July 1, 2013, all salary ranges for employees holding positions in classifications assigned to MEF (Union Code 050/051/052) shall be restored by 10%.**
- 12.3 Effective July 1, 2011, the salary steps for all classifications represented by MEF will change from 5% between each step to 2.5%. This will result in an increase in the number of steps in the pay range from five (5) to nine (9).**
- 12.4 Employees assigned to part-time classifications shall be paid an hourly rate equivalent to the hourly rate for the same full-time classification.**
- 12.4.1 Effective immediately upon ratification of the contract, part-time employees will receive a step increase if not already at top step.**

Proposed CEO language:

7.1 Wages

~~7.1.1 Wages 2008-2009. Effective September 21, 2008, all salary ranges for employees holding positions in classifications assigned to CEO shall be increased by approximately 3.75%. The 2008-2009 salary ranges are listed in Exhibit I.~~

~~7.1.2 Wages 2009-2010. Effective September 20, 2009, all salary ranges for employees holding positions in classifications assigned to CEO shall be increased by approximately 1.50%. The 2009-2010 salary ranges are listed in Exhibit II.~~

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- ~~7.1.3 Wages 2010-2011. Effective September 19, 2010, all salary ranges for employees holding positions in classifications assigned to CEO shall be increased by approximately 2.0%. The 2010-2011 salary ranges are listed in Exhibit III.~~
- ~~7.1.4 Employees assigned to part-time classifications shall be paid an hourly rate equivalent to the hourly rate for the same full-time classification.~~
- 7.1.1 Effective September 18, 2011, all salary ranges for employees holding positions in classifications assigned to CEO (Union Code 100/101) shall be decreased by 10%. This will result in the top and bottom of the range of all classifications represented by CEO being 10% lower. All employees will receive a 10% base pay reduction.**
- 7.1.2 During Fiscal Year 2011-2012, eligible employees in CEO shall receive nine (9) paid time off (PTO) days. Employees shall receive three (3) PTO days at the beginning of each quarter, with the exception of the final quarter. The PTO days must be used by the end of Fiscal Year 2011-2012 or they shall be lost to the employee.**
- 7.1.3 During Fiscal Year 2012-2013, eligible employees in CEO shall receive nine (9) paid time off (PTO) days. Employees shall receive three (3) PTO days at the beginning of each quarter, with the exception of the final quarter. The PTO days must be used by the end of the Fiscal Year 2012-2013 or they shall be lost to the employee.**
- 7.1.4 Effective September 18, 2013, all salary ranges for employees holding positions in classifications assigned to CEO (Union Code 100/100) shall be restored by 10%.**
- 7.1.5 Effective September 18, 2011, the salary steps for all classifications represented by CEO will change from 5% between each step to 2.5%. This will result in an increase in the number of steps in the pay range from five (5) to nine (9).**
- 7.1.6 Employees assigned to part-time classifications shall be paid an hourly rate equivalent to the hourly rate for the same full-time classification.**
- 7.1.7 Effective immediately upon ratification of the contract part-time employees will receive a step increase if not already at top step.**

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AFSCME COUNTER-PROPOSAL – OVERTIME CALCULATION

Proposed MEF language:

ARTICLE 7 HOURS OF WORK AND OVERTIME

7.6 Time spent on paid sick leave, disability leave, holiday leave, ~~vacation leave~~, military leave, **involuntary** compensatory time off duty, or other authorized paid leave shall be deemed time worked for purposes of this Article

7.12 Overtime and Compensatory Time

7.12.1 An employee who works a normal work schedule as defined by Section 7.3 and is authorized or required to work overtime who works in excess of forty (40) hours per work week, shall be compensated at the rate of 1-1/2 times the employee's hourly rate, except when such excess hours result from a change in such employee's work week or shift or from the requirement that such employee fulfill their work week requirement.

7.12.2 Use of voluntary paid time off (vacation, compensatory and personal) shall not be considered time worked for the purpose of calculating eligibility for overtime (except in the case of mandatory overtime).

Proposed CEO language:

ARTICLE 6 HOURS OF WORK AND OVERTIME

6.7 An employee who works a normal work schedule as defined by Article 6.3 and is authorized or required to work overtime who works in excess of forty (40) hours per work week, shall be compensated at the rate of time and one-half (1-1/2) the employee's hourly rate, except when such excess hours result from a change in such employee's work week or shift or from the requirement that such employee fulfill his/her workweek requirement.

6.7.1 Part-time employees are only eligible for overtime pay if the employee works over forty (40) hours in one (1) week.

6.7.2 Use of voluntary paid time off (vacation, compensatory and personal) shall not be considered time worked for the purpose of calculating eligibility for overtime (except in the case of mandatory overtime).

6.10 Time spent on paid sick leave, disability leave, holiday leave, ~~vacation leave~~, military leave, **involuntary** compensatory time off duty, or other authorized paid leave shall be deemed time worked for purposes of this Article.

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AFSCME COUNTER-PROPOSAL – HEALTH AND DENTAL IN LIEU

Proposed MEF language:

13.1 Health Insurance. Eligible employees may elect health insurance coverage under one of the available plans for employee only or employee and dependents. **All conditions of this section are effective January 1, 2012.**

13.1.1 The City shall pay ninety percent (90%) of the full premium cost of the lowest priced plan for employee or employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan up to a maximum of one hundred and fifty dollars (\$150) per month. If the employee's ten percent (10%) contribution for the lowest priced plan exceeds one hundred and fifty dollars (\$150) per month the City shall pay the difference. If an employee selects a plan other than the lowest priced plan, any additional amount required for the premium of any other plan beyond the cost of the lowest priced plan shall be paid for by the employee.

The City shall pay eighty-five percent (85%) of the full premium cost of the lowest priced plan for the employee or employee and dependent coverage, and the employee will pay fifteen percent (15%) of the premium for the lowest priced plan for the employee or employee and dependent coverage.

If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the city's contribution towards the lowest priced plan for employee or employee and dependent coverage.

13.1.2 Effective at the beginning of pay period one (1) of payroll calendar year 2009, the City shall pay ninety percent (90%) of the full premium cost of the lowest priced plan for employee or for employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan for the employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.

13.1.2 Co-pays for all available HMO plans shall be increased to fifteen dollars (\$15).

13.1.3 Effective January 1, 2009, co-pays for all available HMO plans shall be as follows:

- a. Office Visit Co-pay shall be increased to \$10
- b. Prescription Co-pay shall be increased to \$5 for generic and \$10 for brand name. (The Blue Shield HMO will continue to include \$15 non-formulary drug co-pay.)
- c. Emergency Room Co-pay shall be increased to \$50

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13.1.3 Prescription co-pay shall be increased to ten dollars (\$10) for generic drugs as prescribed (up to one hundred (100) day supply and subject to formulary).

13.1.4 Prescription co-pay shall be increased to fifteen dollars (\$15) for brand name drugs as prescribed (up to 100 day supply and subject to formulary).

13.1.5 Prescriptions shall be available via mail order for the same co-pay amounts.

13.1.6 Emergency Room co-pay shall be one hundred dollars (\$100).

13.2 Dual Coverage Reductions: Effective January 1, 2012, an employee may not be simultaneously covered by City provided medical benefits as a City employee, and as a dependent of another City employee.

13.23 Dental Insurance. The City will provide dental coverage for eligible full-time employees and their dependents. As of the date of this agreement the plans include an indemnity plan and a DHMO plan. These plans are described in the City of San Jose Employee Benefits Handbook. A copy of this document shall be available upon request in the Human Resources Department.

The City will provide dental coverage in the lowest priced plan for eligible full time employees and their dependents. If an employee selects a plan other than the lowest priced plan, the City will pay ninety-five (95%) of the full premium cost for the selected dental coverage for eligible full time employees and their dependents and the employee shall pay five percent (5%) of the full premium cost for the selected plan.

13.23.1 Each eligible, full-time employee and dependents shall receive annual maximum coverage of \$1500.00 in the Delta Dental Plan

13.23.2 Each eligible, full-time employee and dependents shall receive a lifetime maximum of \$2,000.00 Orthodontia coverage in the Delta Dental Plan.

13.23.3 Retirees who meet the eligibility requirements defined in Ordinance No. 22261 amending Sections 3.24, Part 24, and 3.28, Part 17, Title 3 of the San Jose Municipal Code are entitled to dental insurance coverage as a benefit of the Federated Retirement System.

13.23.4 The City will use actual rather than blended premium.

13.34 Payment-in-Lieu of Health and Dental Insurance. The purpose of the payment-in-lieu of health and/or dental insurance program is to allow employees who have double health and/or dental insurance coverage to drop the City's insurance and receive a payment-in-lieu.

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13.7 Payment In-Lieu of Health and Dental Insurance. Effective January 1, 2012, employees who qualify for and participate in the payment-in-lieu of health insurance program will receive the following per pay period:

	<u>Health-in-Lieu</u>	<u>Dental-in-Lieu</u>
<u>If eligible for family coverage:</u>	<u>\$272.74</u>	<u>\$23.75</u>
<u>If NOT eligible for family coverage:</u>	<u>\$109.54</u>	<u>\$23.75</u>

13.3.1 Employees who qualify for and participate in the payment-in-lieu of health and/or dental insurance program will receive fifty percent (50%) of the City's contribution toward their health and/or dental insurance at the lowest cost single or family plan if the employee is eligible for family coverage. The City will retain the remaining fifty percent (50%) of that contribution.

13.12 Wellness Program. The City will maintain a comprehensive Wellness Program for all MEF employees, designed to reduce costs associated with chronic and/or preventable medical conditions.

Proposed CEO language:

7.6 Health Insurance

The City will provide health coverage for eligible full-time employees and their dependants in accordance with one of the available plans. **All conditions of this section are effective January 1, 2012.**

~~7.6.1 The City will pay ninety percent (90%) of the full premium cost of the lowest priced plan for employee or for employee and dependent coverage. The employee will pay ten percent (10%) of the premium for the lowest priced plan up to a maximum of one hundred and fifty dollars (\$150) per month. If the employee contributed ten percent (10%) of the lowest priced plan exceeds one hundred and fifty dollars (\$150) per month, the City will pay the difference. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan.~~

7.6.1 The City shall pay eighty-five percent (85%) of the full premium cost of the lowest priced plan for the employee or employee and dependent coverage, and the employee will pay fifteen percent (15%) of the premium for the lowest priced plan for the employee or employee and dependent coverage.

If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the city's contribution towards the lowest priced plan for employee or employee and dependent coverage.



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~~7.6.2 Effective the beginning of pay period one (1) of payroll calendar year 2009, the City will pay ninety percent (90%) of the full premium cost of the lowest priced plan for employee or for employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan for the employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.~~ **Co-pays for all available HMO plans shall be increased to fifteen dollars (\$15).**

~~7.6.3 Effective January 1, 2009, co-pays for all available HMO plans shall be as follows:~~

- ~~a. Office visit Co-pay shall be increased to \$10~~
- ~~b. Prescription Co-pay shall be increased to \$5 for generic and \$10 for brand name. (The Blue Shield HMO will continue to include \$15 non-formulary drug co-pay.)~~
- ~~c. Emergency Room Co-pay shall be increased to \$50~~

7.6.2 Prescription co-pay shall be increased to ten dollars (\$10) for generic drugs as prescribed (up to one hundred (100) day supply and subject to formulary).

7.6.3 Prescription co-pay shall be increased to fifteen dollars (\$15) for brand name drugs as prescribed (up to 100 day supply and subject to formulary).

7.6.4 Prescriptions shall be available via mail order for the same co-pay amounts.

7.6.5 Emergency Room co-pay shall be one hundred dollars (\$100).

7.6.6 Dual Coverage Reductions: Effective January 1, 2012, an employee may not be simultaneously covered by City provided medical benefits as a City employee, and as a dependent of another City employee.

7.9 Payment-In-Lieu of Health and/or Dental Insurance Program

7.9.1 The purpose of the payment-in-lieu of health and/or dental insurance program is to allow employees who have double health and/or dental insurance coverage to drop the City's insurance and receive a payment-in-lieu.

~~7.9.2 Employees who qualify for and participate in the payment-in-lieu of health and/or dental insurance program will receive fifty percent (50%) of the City's contribution toward his/her health and/or dental insurance at the lowest cost single or family plan if the employee is eligible for family coverage. The City will retain the remaining fifty percent (50%) of that contribution.~~

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7.9.2 Payment In-Lieu of Health and Dental Insurance. Effective January 1, 2012, employees who qualify for and participate in the payment-in-lieu of health insurance program will receive the following per pay period:

	<u>Health-in-Lieu</u>	<u>Dental-in-Lieu</u>
<u>If eligible for family coverage:</u>	<u>\$272.74</u>	<u>\$23.75</u>
<u>If NOT eligible for family coverage:</u>	<u>\$109.54</u>	<u>\$23.75</u>

7.24 Wellness Program. The City will maintain a comprehensive Wellness Program for all CEO employees, designed to reduce costs associated with chronic and/or preventable medical conditions.

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AFSCME COUNTER-PROPOSAL – SICK LEAVE AND SICK LEAVE PAYOUT

Proposed MEF language:

10.3 Sick Leave

10.3.1 Sick Leave – Full-time Employees. Each full-time employee shall be entitled to sick leave with pay in accordance with the following provisions:

10.3.1.1 Sick leave shall accrue in an amount equal to the number of hours worked, excluding overtime, multiplied by a factor of 0.04616. Paid leave for holidays, vacation, disability, compensatory time off, **paid release time**, or other paid leave shall be considered time worked for purposes of this section.

10.3.2 Sick Leave – Part-Time Employees

10.3.2.1 During the term of this Agreement, sick leave with pay shall be granted to eligible part-time employees in the amount of 0.04616 hour of sick leave for each hour worked, exclusive of overtime, and shall be subject to the same restrictions, conditions and limitations as are applicable to paid sick leave for full-time employees.

10.3.2.2 Any such part-time employee shall be entitled to paid sick leave only for those days and number of hours the employee is in fact assigned to work or would have been required to work, notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Article.

10.3.2.3 No eligible part-time employee shall be entitled to sick leave with pay for any day or portion of a day during which the employee is absent, if in fact, the employee is not assigned to work or would not have been required to work on that day or portion of that day, inclusive of any hours an employee elects to work in addition to their indefinite assignment, notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Article.

10.3.3 Use of Sick Leave. Accrued sick leave may be utilized if the employee is required to be absent from work ~~on account of~~ **due to** non-job related illness or injury; routine medical or dental appointments; or for the care related to the illness or injury of the employee's child, **dependent**, mother, father, spouse or domestic partner registered with the Department of Human Resources.

Up to a total of forty-eight (48) hours of accrued sick leave per calendar year may be utilized if the employee is required to be absent for the care related to the illness or injury of the employee's grandchild, brother, sister, father-in-law, mother-in-law, stepfather, stepmother or stepchild.

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When an employee has exhausted all of his/her sick leave, the employee may be allowed to use accrued vacation, compensatory time or personal leave in lieu of unpaid time subject to the approval of the Department Director or designee and pursuant to 10.3.5.1 may be required to furnish medical verification.

- 10.3.3.1 Accrued sick leave may also be utilized for job-related illness or injury ~~in accordance with the provisions of Section 10.4 Disability Leave~~, or if the employee is medically required to be absent from work between the date an examining physician determines the employee's condition to be "permanent and stationary" and the date the employee is so notified. Such accrued sick leave may not be utilized if the employee is otherwise entitled to temporary disability leave compensation for the above-referenced period of time. Accrued sick leave not to exceed three (3) working days may be granted at the discretion of the Director of Human Resources or designee, following the notification referred to above. Telephone notice or a notice mailed to the employee's last known address of record shall be determined notice to the employee.
- 10.3.3.2 Accrued sick leave not to exceed three working days may be granted in circumstances where an alleged job-related illness or injury is involved, but the employee fails to provide medical verification of such job-related illness or injury.
- 10.3.3.3 Anything in this Article to the contrary notwithstanding, an employee who, pursuant to the provisions of Section 10.4 of this Agreement, has been receiving temporary disability leave compensation and who has received the maximum allowable amount of such compensation pursuant to Section 10.4, and who is entitled to Workers' Compensation temporary disability benefits, and has exhausted all other available paid leave, shall be permitted to utilize accrued sick leave subject to the following restrictions: Sick Leave shall be utilized in fifteen minute increments, but in no event shall an employee receive an amount, including any Workers' Compensation temporary disability compensation, in excess of such employee's regular base pay.
- 10.3.3.4 Accrued sick leave may be used in accordance with the provisions of the Catastrophic Illness or Injury Time Donation Program.
- 10.3.4 Except as otherwise provided by resolution of the City Council, paid sick leave shall not be allowed for any absence from work occasioned by intoxication, chronic alcoholism or use of narcotics not prescribed by a licensed physician. If approved by the City, an employee who is enrolled and participating in a substance abuse treatment program may use sick leave for absences resulting from participation in such program. The City may require appropriate verification.

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10.3.5 No employee shall be entitled to or be granted sick leave, either with or without pay, unless the employee notifies their immediate superior, Department Director or designee, of the employee's intent to take such sick leave due to a personal or family illness prior to the commencement of the sick leave where such notice is possible; provided, however, that the City Manager, or designee, may waive the requirement of such notice upon presentation of a reasonable excuse by such employee.

10.3.5.1 Any time an employee is required to report to work and is unable to report due to illness or injury, an employee may be required to furnish medical verification or other substantiation for any such absences. Any such requirement for medical verification or other substantiation shall be made on a case-by-case basis. This does not limit the City's ability to require medical verification or other substantiation for a particular employee or employees for an extended period of time.

10.3.5.2 A full-time employee of the City shall be entitled to sick leave without any pay if required to be absent from work on account of any non-job related illness, injury or disability, including absences related to pregnancy or childbirth, in all situations where such employee is not entitled to sick leave with pay. Any full-time employee who is unable to return to work after being absent on paid and/or unpaid sick leave for a maximum of eighteen (18) consecutive months or for a maximum of eighteen (18) cumulative months in any period of twenty-four (24) consecutive months shall be separated from City service. Notwithstanding the foregoing, in no event shall an employee be entitled to a leave of absence without pay for a period in excess of twelve (12) cumulative months or for twelve (12) consecutive months in any period of twenty-four (24) consecutive months shall be separated from City service.

10.3.5.2.1 Pursuant to Article 10.8, an employee who is not otherwise entitled to any additional unpaid sick leave may request a leave of absence without pay, subject to approval of the appointing authority or designee.

10.3.5.3 A full-time or part-time employee on paid or unpaid medical leave, which extends for a period of thirty (30) or more calendar days may be required to inform the department of their medical status and probable date of return to work as requested.

10.3.6 Sick Leave Payoff. Sick Leave Payout shall be given to full-time and part-time benefited employees who are members of the Federated City Employees Retirement System at the time of retirement or death under one of the following conditions:

10.3.6.1 Federated City Retirement System. The employee is a member of the Federated City Retirement System, and retired under the provisions cited in the plan, and credited with at least fifteen (15) years of service in this

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retirement plan as of July 9, 2011, or credited with at least ten (10) years of service prior to a disability retirement.

- 10.3.6.2 Terminated Employee with Vesting Rights. The employee has terminated service with the City in good standing, retained vesting rights in a retirement system according to provisions in the San José Municipal Code, and following such termination, qualifies for retirement and retires under the provisions cited in the code and has at the time of retirement credit for at least fifteen (15) years of service in the applicable retirement plan.
- 10.3.6.3 Death During Service. The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least fifteen (15) years of service in any applicable retirement plan.
- 10.3.6.4 Death of Terminated Employee. The estate of any full-time or eligible part-time employee who had terminated service with the City in good standing but had retained vesting rights in a retirement system according to provisions in the San José Municipal Code, and dies (on or after July 10, 1977) prior to becoming eligible for retirement allowances as cited under provisions of the San José Municipal Code, and has at the time of death credit for at least fifteen (15) years of service in the applicable retirement plan.
- 10.3.6.5 Payout shall be determined as follows. If a full-time or eligible part-time employee at the time of retirement or death has earned unused sick leave hours, the employee or Estate shall be paid the equivalent of a specified percent of their hourly rate of pay at the time of retirement, termination or death, whichever comes first, multiplied by the total number of accumulated and unused hours of sick leave as of the date of retirement or death as follows:

Less than 400 hours: Hours accumulated \times 50% of final hourly rate
or 400 - 799 hours: Hours accumulated \times 60% of final hourly rate
or 800 - 1200 hours: Hours accumulated \times 75% of final hourly rate

These payout levels apply to employees who retire, have deferred vested, or have reached fifteen (15) years of service on or before July 9, 2011.

Full-time or eligible part-time employees with less than fifteen (15) years of service before July 9, 2011, who at the time of retirement directly from city service, have earned unused sick leave hours, shall be paid the equivalent of a specified percent of their hourly rate pay at the time of retirement directly from service, multiplied by the total number of accumulated and unused hours of sick leave as of the date of retirement directly from service as follows:



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0-399 Hours: Hours accumulated x 50% of final hourly rate
or 400 – 1200 hours: Hours accumulated x 60% of final hourly rate

- 10.3.7 Use of previously accumulated sick leave hours. For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time employee at the time of the employee's retirement or death, unused sick leave from prior periods of employment with the City shall be used. Previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.

Proposed CEO language:

ARTICLE 18 SICK LEAVE

- 18.1 Each full-time employee shall be entitled to sick leave with pay in accordance with the following provisions:

18.1.1 Sick leave shall accrue in an amount equal to the number of hours worked, excluding overtime, multiplied by a factor of 0.04616. Paid leave for holidays, vacation, disability, compensatory time off, **paid release time**, or other paid leave shall be considered time worked for purposes of this section.

18.1.2 Accrued sick leave may be utilized if the employee is required to be absent from work ~~on account of~~ **due to** non-job related illness or injury; routine medical or dental appointments, or for the care related to the illness or injury of the employee's child, **dependent**, mother, father, spouse or domestic partner registered with the Department of Human Resources.

Up to a total of forty-eight (48) hours of accrued sick leave per calendar year may be utilized if the employee is required to be absent for the care related to the illness or injury of the employee's grandchild, brother, sister, father-in-law, mother-in-law, stepfather, stepmother or stepchild.

18.1.2.1 ~~Accrued sick leave may also be utilized for job-related illness or injury in accordance with the provisions of Article 19 Disability Leave, or if the employee is medically required to be absent from work between the date an examining physician determines the employee's condition to be "permanent and stationary" and the date the employee is so notified. Such accrued sick leave may not be utilized if the employee is otherwise entitled to temporary disability leave compensation for the above-referenced period of time. Accrued sick leave not to exceed three (3) working days may be granted at the discretion of the Director of Human Resources or designated representative, following the notification referred to above. Telephone notice or a notice mailed to the employee's last known address of record shall be determined notice to the employee.~~

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- 18.1.2.2 Accrued sick leave not to exceed three (3) working days may be granted in circumstances where an alleged job-related illness or injury is involved, but the employee fails to provide medical verification of such job-related illness or injury.
- 18.1.2.3 Anything in this Article to the contrary notwithstanding, an employee who, pursuant to the provisions of Article 19 of this Agreement, has been receiving temporary disability leave compensation and who has received the maximum allowable amount of such compensation pursuant to Article 19, and who is entitled to Workers' Compensation temporary disability benefits, shall be permitted to utilize accrued sick leave subject to the following restrictions: Sick Leave shall be utilized in fifteen minute increments, but in no event shall an employee receive an amount, including any Workers' Compensation temporary disability compensation, in excess of such employee's regular base pay.
- 18.1.2.4 Accrued sick leave also may be used in accordance with Article 30, Catastrophic Illness.
- 18.1.3 Except as otherwise provided by resolution of the City Council, paid sick leave shall not be allowed for any absence from work occasioned by intoxication, chronic alcoholism or use of narcotics not prescribed by a licensed physician.
- If approved by the City, an employee who is enrolled and participating in a substance abuse treatment program may use sick leave for absences resulting from participation in such program. The City may require appropriate verification.
- 18.1.4 No employee shall be entitled to or be granted sick leave, either with or without pay, unless he or she, or someone on his or her behalf notifies his or her immediate superior or Department Director, or the Director of Human Resources, of his or her intent to take such sick leave due to a personal or family illness prior to the commencement of the sick leave where such notice is possible; provided, however, that the City Manager may waive the requirement of such notice upon presentation of a reasonable excuse by such employee.
- 18.1.5 Any time an employee is required to report to work and is unable to report due to illness or injury, an employee may be required to furnish medical verification or other substantiation for any such absences. An employee shall be given reasonable notice by his/her supervisor or designee if medical verification is required. If there is a dispute as to the definition of "reasonable notice," this shall solely be determined by the Director of the Office of Employee Relations or designee and is not subject to the grievance procedures of this Agreement.
- 18.1.6 A full-time employee of the City shall be entitled to sick leave without any pay if required to be absent from work on account of any non-job related illness, injury or

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disability, including absences of female employees related to pregnancy or childbirth in all situations where such employee is not entitled to sick leave with pay. Any full-time employee who is unable to return to work after being absent on paid and/or unpaid sick leave for a maximum of eighteen (18) consecutive months or for eighteen (18) cumulative months in any period of twenty-four (24) consecutive months shall be separated from City service. Notwithstanding the foregoing, in no event shall an employee be entitled to a leave of absence without pay for a period in excess of twelve (12) cumulative months or for twelve (12) consecutive months in any period of twenty-four (24) consecutive months and shall be separated from City service.

- 18.1.6.1 Pursuant to Article 13, an employee who is not otherwise entitled to any additional unpaid sick leave may request a leave of absence without pay, subject to approval of the appointing authority or designee.

18.2 Sick Leave Payoff

Sick leave payoff shall be given to each full-time and part-time employee who is a member of the Federated Retirement System at the time of retirement or death under one of the following conditions:

18.2.1 Federated Retirement System:

The employee is:

- 18.2.1.1 a member of the Federated Retirement System, and
- 18.2.1.2 retired under the provisions cited in the system, and
- 18.2.1.3 credited with at least fifteen (15) years of service in this retirement system, or
- 18.2.1.4 credited with at least ten (10) years of service prior to a disability retirement

18.2.2 Terminated Employee with Vesting Rights:

The employee has:

- 18.2.2.1 terminated his/her service with the City, and
- 18.2.2.2 retained vesting rights in a retirement system according to provisions in the San Jose Municipal Code, and
- 18.2.2.3 following such termination, qualifies for retirement and retires under the provisions cited in the code and
- 18.2.2.4 has at the time of retirement credit for at least fifteen (15) years of service in the applicable retirement plan.

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18.2.3 Death During Service:

The estate of any full-time or eligible part-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least fifteen (15) years of service in any applicable retirement plan;

18.2.4 Death of Terminated Employee:

The estate of any full-time or eligible part-time employee who:

- 18.2.4.1 had terminated service with the City but had retained vesting rights in a retirement system according to provisions in the San Jose Municipal Code, and
- 18.2.4.2 dies prior to becoming eligible for retirement allowances as cited under provisions of the San Jose Municipal Code, and
- 18.2.4.3 has at the time of death credit for at least fifteen (15) years of service in the applicable retirement plan.

18.3 Payout shall be determined as follows:

- 18.3.1 If a full-time or eligible part-time employee at the time of his/her retirement or death has earned, unused sick leave hours, he/she shall be paid the equivalent of a specified percent of his/her hourly rate of pay at the time of retirement, termination or death, whichever comes first, multiplied by the total number of his/her accumulated and unused hours of sick leave as of the date of his/her retirement or death.
- 18.3.2 Less than 400 hours: Hours accumulated x 50% of final hourly rate
or 400 - 799 hours: Hours accumulated x 60% of final hourly rate
or 800 - 1200 hours: Hours accumulated x 75% of final hourly rate.

These payout levels apply to employees who retire, have deferred vested, or have reached fifteen (15) years of service on or before September 17, 2011.

Full-time or eligible part-time employees with less than fifteen (15) years of service before September 17, 2011, who at the time of retirement directly from city service, have earned unused sick leave hours, shall be paid the equivalent of a specified percent of their hourly rate pay at the time of retirement directly from service, multiplied by the total number of accumulated and unused hours of sick leave as of the date of retirement directly from service as follows:

**0-399 Hours: Hours accumulated x 50% of final hourly rate
or 400 – 1200 hours: Hours accumulated x 60% of final hourly rate**

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18.4 Use of previously accumulated sick leave hours:

For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time or eligible part-time employee at the time of his/her retirement or death, unused sick leave from prior periods of employment with the City shall be used. Previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.

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AFSCME COUNTER-PROPOSAL – HOLIDAY CLOSURE

Proposed MEF language:

- 10.1.2 Holiday Closure. The City Manager, or designee, may determine that all non-essential City operations close for a Holiday Closure during the Christmas and New Year holidays. In such event, employees shall be encouraged to take time off, however, it shall not be a requirement. The City agrees to temporarily reassign any employee who elects to work during the holiday closure but whose regular assignment is in a department, which is non-operational during the closure. The City will provide as much advance notice as practical of the temporary reassignment to the employee and affected departments. The employee will not be reassigned to a position that requires a work schedule different than his/her current work assignment.

Employees electing to take time off may choose to take vacation, compensatory time, personal leave or lost unpaid time during the closure period. Employees taking lost unpaid time or Holiday Closure payroll code during the closure shall continue to receive accrue vacation, sick leave, city-wide and department seniority. Employees who take unpaid leave, or payroll code Holiday Closure code shall not accrue vacation or sick leave during the time off. Any employee who elects to take unpaid leave, or payroll code Holiday Closure, will be required to pay retirement contributions for any Holiday Closure hours. The City agrees to provide employees with the mathematical formula used to determine the amount an employee will be required to pay for retirement contributions for any Holiday Closure hours in advance, and no later than two (2) pay periods prior to the commencement of the Holiday Closure.

Departments designated as essential for City operations, but require less than full staffing for the efficient conduct of public business for such department shall staff the department with employees who volunteer to work during the holiday closure, and if no employees volunteer, then based upon the length of time served by each employee in the essential classification.

Proposed CEO language:

- 16.6.1 Holiday Closure. The City Manager, or designee, may determine that all nonessential City operations close for a Holiday Closure during the Christmas and New Year holidays. In such event, employees shall be encouraged to take time off, however, it shall not be a requirement. The City agrees to temporarily reassign any employee who elects to work during the holiday closure but whose regular assignment is in a department, which is non-operational during the closure. The City will provide as much advance notice as practical of the temporary reassignment to the employee and affected departments. The employee will not be reassigned to a position that requires a work schedule different than his/her current work assignment.



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Employees electing to take time off may choose to take vacation, compensatory time, personal leave or unpaid leave during the closure period. Employees who take unpaid leave, or payroll code Holiday Closure, during the closure shall continue to receive the following accruals: accrue vacation, sick leave, city-wide and department seniority. Employees who take unpaid leave, or payroll code Holiday Closure shall not accrue vacation or sick leave during time off. Any employee who elects to utilize unpaid leave, or payroll code Holiday Closure, will be required to pay retirement contributions for any Holiday Closure hours. The City agrees to provide employees with the mathematical formula utilized to determine the amount an employee will be required to pay for retirement contributions for Holiday Closure hours in advance, and no later than two (2) pay periods prior to the commencement of the Holiday Closure.

Departments designated as essential for City operations, but require less than full staffing for the efficient conduct of public business shall staff the department with employees from each essential classification with employees who volunteer to work during the holiday closure, and if no employee volunteers, then based upon the length of time served by each employee in the essential classification.

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AFSCME COUNTER-PROPOSAL – SAFETY

Proposed MEF language:

ARTICLE 15 SAFETY

15.1 The City shall provide a safe and healthy working environment in accordance with applicable State and Federal laws and regulations. The Union agrees that where safety devices or protective equipment is required or furnished, its use shall be mandatory.

15.2 An employee, who believes their work assignment is unsafe or believes a safety violation exists and for that reason refuses to perform such assignment, will first report such unsafe conditions to their immediate supervisor and try and resolve it at that level. The employee may at any time request that a union representative be present for any part of the process. shall be assigned other duties, if other duties are available, and no other employee shall be assigned the work assignment in dispute until after a determination has been made by the City's Safety Officer. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the above determination. Prior to being placed on such leave, however, the employee may request the presence of the appropriate Union representative.

Correct 15.3 If the employee is not satisfied with the response of the immediate supervisor, the employee may request that the City make a determination as to the safeness of the work assignment in accordance with Cal/OSHA regulations, including but not limited to Labor Code Section 6311. If the City is asked to make a determination, an employee will be assigned to work at a different location or other duties while an investigation is underway. No other employee shall be assigned the work assignment in dispute until after a determination is made by the City's designated safety official. The employee's immediate supervisor shall immediately request the City's Safety Officer to make a determination as to the safeness of the work assignment in question. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to the refusal to perform. If the employee disagrees with the determination of the City's Safety Officer and continues to refuse to perform the assignment, the employee shall be assigned other duties, if such other duties are available, and a prompt request for a determination by the Department of Industrial Safety of the State of California shall be made. Pending such determination, the assignment shall not be given to another employee. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the determination of the Department of Industrial Safety. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to refusal to perform. The determination by the Department of Industrial Safety of the safeness or unsafeness of the work assignment shall not be subject to the grievance procedure.

15.4 If the working condition in dispute cannot be resolved and the employee is subject to disciplinary action the grievance procedure will be utilized. Safety grievances shall be submitted at Step III. Upon request of either the employee or the representative of



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~~the State of California, Division of Occupational Safety and Health, the appropriate Union representative shall be permitted to accompany the City Safety Officer, or the representative of the Division of Industrial Safety, or both, during the inspections of the questioned work assignment. Neither the employee nor the appropriate Union representative shall suffer any loss of compensation for time involved in the inspections of the questioned work assignment during their respective regularly scheduled working hours. In no event shall overtime or premium pay be paid for any time spent in such inspections.~~

- ~~15.5 The city-wide Safety Committee shall provide one seat for an MEF designated representative. The MEF representative shall attend regular meetings for the purposes of informing the committee of safety issues and concerns and assisting in the development of educational training sessions.~~

Proposed CEO language:

ARTICLE 11 SAFETY

- 11.1 The City shall provide a safe and healthy working environment in accordance with applicable State and Federal laws and regulations. The Employee Organization agrees that where safety devices or protective equipment is required or furnished, its use shall be mandatory.

- 11.2 An employee, who believes their work assignment is unsafe or believes a safety violation exists and for that reason refuses to perform such assignment, will first report such unsafe conditions to their supervisor and try and resolve it at that level. The employee may at any time request that a union representative assist or be present for any part of the process. shall be assigned other duties, if other duties are available, and no other employee shall be assigned the work assignment in dispute until after a determination has been made by the City's Safety Officer. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the above determination. Prior to being placed on such leave, however, the employee may request the presence of the appropriate Union representative.

- 11.3 In cases of dispute over safe working conditions, the employee may request that the City make a determination as to the safety of the work assignment and/or workplace. If the City is asked to make a determination, an employee will be assigned other duties if other duties are available while an investigation is underway, or assigned to another work location if available. No other employee shall be assigned the work assignment in dispute until after a determination is made and documented in writing by the City's designated safety official or the appropriate state or federal agency. The employee's immediate supervisor shall immediately request the City's Safety Officer to make a determination as to the safeness of the work assignment in question. If the assignment is determined to be unsafe, the

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~~employee shall be reimbursed for any time lost due to the refusal to perform. If the employee disagrees with the determination of the City's Safety Officer and continues to refuse to perform the assignment, the employee shall be assigned other duties, if such other duties are available, and a prompt request for a determination by the Department of Industrial Safety of the State of California shall be made. Pending such determination, the assignment shall not be given to another employee. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the determination of the Department of Industrial Safety. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to refusal to perform. The determination by the Department of Industrial Safety of the safety or unsafety of the work assignment shall not be subject to the grievance procedure.~~

- 11.4 **If the working condition in dispute cannot be resolved and the employee is subject to disciplinary action the grievance procedure will be utilized. Safety grievances shall be submitted at Step III.** ~~Upon request of either the employee or the representative of the State of California, Division of Occupational Safety and Health, the appropriate Union representative shall be permitted to accompany the City Safety Officer, or the representative of the Division of Industrial Safety, or both, during the inspections of the questioned work assignment. Neither the employee nor the appropriate Union representative shall suffer any loss of compensation for time involved in the inspections of the questioned work assignment during their respective regularly scheduled working hours. In no event shall overtime or premium pay be paid for any time spent in such inspections.~~

- 11.5 ~~As used herein, the term "City Safety Officer" shall include any person designated to act as such.~~

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AFSCME PROPOSAL – GRIEVANCE PROCEDURE

Proposed MEF Language:

ARTICLE 20 GRIEVANCE PROCEDURE

20.1 Any dispute between the City and the Union regarding the interpretation or application of the written Memorandum of Agreement, or the interpretation or application of the Employer-Employee Resolution #39367, as amended, shall be considered a grievance. A grievance may be initiated only by the employee directly affected except as otherwise provided herein. Where the dispute directly affects a significantly large group of employees in the representation unit, the appropriate Union may file a grievance on behalf of such employee(s).

20.2 Procedures

20.2.1 Grievances involving the interpretation or application of Resolution #39367, as amended, including any grievance filed pursuant to Section 22 of that Resolution, shall be filed in writing with the Municipal Employee Relations Officer, or designee, and shall be processed in accordance with applicable impasse resolution procedures of that Resolution.

20.2.2 Grievances involving the interpretation or application of this Agreement shall be processed in accordance with the procedures set forth in this Article 20.

20.2.3 Alternative to the Grievance Procedure. As an alternative to the formal grievance procedure, MEF and Employee Relations may, through mutual agreement, meet and attempt to resolve on an informal basis, problems which arise involving contract interpretation, Civil Service rules, or other matters affecting the relationship between the Union and the City.

The Office of Employee Relations and MEF may review an issue on an ad hoc basis on its merits and its relationship to the contract. The result of these discussions may be:

1. To create a side agreement for immediate implementation.
2. To continue the current practice for discussions during the next contract period.
3. To change practice to conform to the contract language.
4. To maintain the status quo.

If the issue cannot be resolved through this process, the Union maintains the option to proceed through the appropriate grievance procedure.

20.3 Step I

20.3.1 An employee may present the grievance orally either directly or through the Union representative to the immediate supervisor. The grievance must be presented within ten (10) working days following the event or events on which the grievance is based, or the grievant or the Union first became aware of, or should have become

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aware of the alleged violation of the Agreement. The immediate supervisor shall make whatever investigation is necessary to obtain the facts pertaining to the grievance. Within ten (10) working days after receiving the oral grievance, the immediate supervisor shall give the employee a verbal reply.

20.3.2 If the employee is not satisfied with the reply of their immediate supervisor, the employee may appeal the grievance to Step II.

20.4 **Step II**

20.4.1 If the employee desires to appeal the grievance to Step II, the grievance shall be reduced to writing and presented to the Department Director or designee within five (5) working days following the receipt of the immediate supervisor's verbal reply.

20.4.2 To ensure clear communication and assist in resolving the grievance, the written grievance shall contain the following information:

- A clear statement of the problem.
- The alleged facts upon which the grievance is based.
- The section of the MOA claimed to have been violated and the specific violation claimed.
- The remedy requested by the grievant.

20.4.3 The Department Director or designee, may arrange a meeting between the Director, the employee, the appropriate Union representative, and the immediate supervisor to attempt to resolve the grievance. In any event the Department Director or designee, shall give a written decision to the employee within ten (10) working days following receipt of the written appeal to Step II.

20.4.4 If the employee is not satisfied with the decision, the employee may appeal the grievance to Step III.

20.5 **Step III**

20.5.1 If the employee desires to appeal the grievance to Step III, the employee shall indicate in writing the reason for the appeal and present it along with the original written grievance to the Municipal Employee Relations Officer or designee within ten (10) working days following receipt of the written decision at Step II.

20.5.2 Within ten (10) working days after receipt of the appeal to Step III, the Municipal Employee Relations Officer or designee shall schedule a meeting with the employee, the appropriate Union representative, and the Department Director or designee to discuss the matter. A written decision shall be given to the employee or the appropriate Employee Organization representative within ten (10) working days following the meeting.

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20.5.3 If the decision of the Municipal Employee Relations Officer or designee is unsatisfactory, the appropriate Employee Organization representative may appeal the grievance to Step IV - Arbitration.

20.6 Step IV – Arbitration

20.6.1 If the grievance has been properly processed through the previous steps of the procedure and not resolved, the appropriate Union representative may appeal the grievance to Arbitration. The appropriate Union representative shall notify the Municipal Employee Relations Officer or designee in writing, within ten (10) working days following receipt by the employee of the written answer at Step III.

20.6.2 Within ten (10) working days following the receipt of the notice of appeal to Step IV, a meeting shall be arranged by the Municipal Employee Relations Officer or designee with the appropriate Union representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. The employee may also be permitted to attend. If the parties are unable to agree upon the issue, or issues, each party will prepare its statement of the issue, or issues, and jointly submit the separate statement of issue, or issues, to the arbitrator. At the beginning of the hearing referred to herein, the arbitrator shall determine what the issue, or issues, are.

20.6.3 The parties may mutually agree upon the selection of the arbitrator or shall jointly request the State of California Conciliation Service to provide a list of seven (7) persons qualified to act as arbitrators. **Either party shall notify the other that such a request is being made. Any costs associated with obtaining a list from the State of California Conciliation Service shall be divided equally between the parties. The City will process the request after receiving the Union's share of the cost for obtaining the list.**

Proposed CEO Language:

ARTICLE 12 GRIEVANCE PROCEDURE

12.1 Any dispute between the City and an employee, or, where provided, the appropriate representative of the Employee Organization, regarding the interpretation or application of the written Memorandum of Agreement, or the interpretation or application of the Employer-Employee Resolution No. 39367, as amended, shall be considered a grievance. A grievance may be initiated only by the employee directly affected except as otherwise provided herein. Where the dispute directly affects a significantly large group of employees in the representation unit, the appropriate Employee Organization **Union** may file a grievance on behalf of such employee(s).

12.2 Grievances involving the interpretation or application of Resolution No. 39367, as amended, shall be filed in writing with the Municipal Employee Relations Officer and shall be processed in accordance with the applicable provisions of the resolution.



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12.3 STEP I

12.3.1 An employee may present the grievance orally either directly or through the Employee Organization representative to the immediate supervisor. The grievance must be presented within ten (10) working days following the event or events on which the grievance is based, **or the grievant or the Union first became aware of, or should have become aware of the alleged violation of the Agreement.** The immediate supervisor shall make whatever investigation is necessary to obtain the facts pertaining to the grievance. Within ten (10) working days after receiving the oral grievance, the immediate supervisor shall give the employee an oral reply.

12.3.2 If the employee is not satisfied with the reply of his/her immediate supervisor, he/she may appeal the grievance to Step II.

12.4 STEP II

12.4.1 If the employee desires to appeal the grievance to Step II, the grievance shall be reduced to writing and presented to the Department Director, or his/her designated representative, within five (5) working days following the receipt of the immediate supervisor's oral reply.

12.4.2 To ensure clear communication and assist in resolving the grievance, the written grievance shall contain the following information:

- A clear statement of the problem
- The alleged facts upon which the grievance is based
- The section of the MOA claimed to have been violated and the specific violation claimed
- The remedy requested by the grievant
- The grievance shall be signed and dated by the employee

12.4.3 The Department Director, or his/her designated representative, may arrange a meeting between himself/herself, the employee, the appropriate Employee Organization representative, and the immediate supervisor to attempt to resolve the grievance. In any event the Department Director, or his/her designated representative, shall give a written decision to the employee within ten (10) working days following receipt of the written appeal to Step II.

12.4.4 If the employee is not satisfied with the decision he/she may appeal the grievance to Step III.

12.5 STEP III

12.5.1 If the employee desires to appeal the grievance to Step III, the employee shall indicate in writing the reason for the appeal and present it along with the original written grievance to the Municipal Employee Relations Officer within five (5) working days following receipt of the written decision at Step II.

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12.5.2 Within ten (10) working days after receipt of the appeal to Step III, the Municipal Employee Relations Officer shall hold a meeting with the employee, the appropriate Employee Organization representative, and the Department Director or his/her designated representative to discuss the matter. A written decision shall be given to the employee or the appropriate Employee Organization representative within five (5) working days following the meeting.

12.5.3 If the decision of the Municipal Employee Relations Officer is unsatisfactory, the appropriate Employee Organization representative may appeal the grievance to Step IV - Arbitration.

12.6 STEP IV - ARBITRATION

12.6.1 If the grievance has been properly processed through the previous steps of the procedure and not resolved, the appropriate Employee Organization representative may appeal the grievance to Arbitration. The appropriate Employee Organization representative shall notify the Municipal Employee Relations Officer in writing, within fourteen (14) working days following receipt by the employee of the written answer at Step III.

12.6.2 Within fourteen (14) working days following the receipt of the notice of appeal to Step IV, a meeting shall be arranged by the Municipal Employee Relations Officer with the appropriate Employee Organization representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. The employee may also be permitted to attend. If the parties are unable to agree upon the issue, or issues, each party will prepare its statement of the issue, or issues, and jointly submit the separate statement of issue, or issues, to the arbitrator. At the beginning of the hearing referred to herein, the arbitrator shall determine what the issue, or issues, are.

12.6.3 The parties may mutually agree upon the selection of the arbitrator or shall jointly request the State of California Conciliation Service to provide a list of seven (7) persons qualified to act as arbitrators. **Either party shall notify the other that such a request is being made. Any costs associated with obtaining a list from the State of California Conciliation Service shall be divided equally between the parties. The City will process the request after receiving the Union's share of the cost for obtaining the list.**

12.6.4 The parties shall meet at least ten (10) working days prior to the arbitration hearing date for the purpose of pre-arbitration settlement or narrowing issues for arbitration, discussing possible stipulations and exchanging documents intended for use at the hearing.

12.6.5 The arbitrator shall hold a hearing on the issue, or issues, submitted, or as determined by the arbitrator, if the parties have not mutually agreed upon the issue, or issues, and render a written decision and reasons for the decision as soon after the hearing as

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possible. The decision shall be binding on both parties, and shall be limited to the issue, or issues, involved.

- 12.6.6 The decision shall be sent to the Municipal Employee Relations Officer and to the employee or appropriate representative of the Employee Organization.
- 12.6.7 Each of the parties shall pay for the time and expenses of its representatives and witnesses through all stages of the arbitration procedure and shall contribute equally to the fee and expenses of the arbitrator. The arbitrator's fee shall be determined in advance of the hearing.
- 12.6.8 The parties agree that the arbitrator shall not add to, subtract from, change or modify any provision of this agreement and shall be authorized only to apply existing provisions of this Agreement to the specific facts involved and to interpret only applicable provisions of this agreement, except that in the event it is a dispute concerning the arbitrability of the grievance, the arbitrator shall have the authority to rule on the issue of arbitrability, to wit: Whether or not the grievance involved an interpretation of the Agreement. However, the arbitrator will have no authority to rule on the issue of whether or not the grievance is a matter that is within the scope of representation, as defined under the Meyers-Milias-Brown Act.
- 12.6.9 The parties agree that the time limits set forth herein are of the essence of this procedure and are to be strictly complied with. Time limits may be extended only by written mutual agreement of the parties.

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AFSCME PROPOSAL – DISCIPLINARY ACTION

Proposed MEF Language:

ARTICLE 18 DISCIPLINARY ACTION

- 18.1 The City of San Jose discipline policy applies to both regular permanent (non-probationary) full-time and regular permanent (non-probationary) part-time benefited **and un-benefited** employees and is described in the Discipline Policy, contained in the City Policy Manual. When the need for disciplinary action arises, disciplinary action will be taken commensurate with the seriousness of the offense. The levels of discipline include informal actions, which are oral counseling, documented oral counseling and written reprimand. Formal disciplinary actions are suspension, salary step reduction, demotion and dismissal.
- 18.2 When an employee is being interviewed and the employee reasonably believes that the investigative interview is likely to result in disciplinary action, the employee has the right to request to have a **two** union representatives **in the form of the Business Agent and either an elected Union official or steward** present during the investigative interview.
- 18.3 Step Reduction. The San Jose Municipal Code defines disciplinary action as dismissal, demotion and suspension. In addition, the appointing authority may reduce an employee's salary step. The salary may be reduced to no lower than step one (1) of the salary range, and the amount and length of time of the salary reduction will be specified in the Notice of Intended Discipline. The salary may be reduced either for a specified period of time or until the condition which caused the salary reduction has been corrected. The employee may appeal this action, including the amount and the length of time, to the Civil Service Commission according to the same rules as apply to other formal disciplinary appeals.
- 18.4 Police Department Employees. Disciplinary actions and internal investigations involving non-sworn employees who are subject to the Police Department Duty Manual will be administered in accordance with section C1811 of the Duty Manual and the Police Department Discipline Procedures Handbook for Employee Relations Liaisons **shall be governed consistent with the rules applicable to sworn members of the Police Department, including, but not limited to the following:**
- 18.4.1 In the event the City determines that discipline may be imposed, it shall complete its investigation and notify the police employee and the Union of its proposed disciplinary action within one year of the discovery of the act, omission, or other misconduct.**
- 18.4.2 A Documented Oral Counseling (DOC) may be appealed under this section to the level of the Assistant Chief of Police. However, should a DOC be the result of the Assistant Chief having reduced a higher form of discipline to a DOC with**

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which the affected employee is still dissatisfied, such DOC may be appealed to the level of the Chief of Police.

18.4.3 Letters of Reprimand (LORs) may be appealed to the City Manager level.

18.4.4 Nothing herein constitutes a waiver of rights of employees otherwise granted by law (e.g., the Meyers-Milius-Brown Act, Government Code Sections 3500, et seq., and the Public Safety Officers Procedural Bill of Rights Act, Government Code Sections 3300, et. seq.).

18.4 ~~No provisions of this Article shall be subject to the grievance procedures of this Agreement. The appeal process for any disciplinary action shall only be those described in the San Jose Municipal Code and City of San Jose Discipline Policy in the City Policy Manual and are not~~ **be** subject to appeal through the grievance procedure of this Agreement.

Proposed CEO Language:

ARTICLE 27 DISCIPLINARY ACTION

- 27.1 The City of San Jose discipline policy applies to both regular permanent (non-probationary) full-time and regular permanent (non-probationary) part-time benefited **and un-benefited** employees and is described in the Discipline Policy, contained in the City Policy Manual. When the need for disciplinary action arises, disciplinary action will be taken commensurate with the seriousness of the offense. The levels of discipline include informal actions, which are oral counseling, documented oral counseling and written reprimand. Formal disciplinary actions are suspension, salary step reduction, demotion and dismissal.
- 27.2 When an employee is being interviewed and the employee reasonably believes that the investigative interview is likely to result in disciplinary action, the employee has the right to request to have a **two** union representatives **in the form of the Business Agent and either an elected Union official or steward** present during the investigative interview.
- 27.3 **Step Reduction.** The San Jose Municipal Code defines disciplinary action as dismissal, demotion and suspension. In addition, the appointing authority may reduce an employee's salary step. The salary may be reduced to no lower than step one of the five-step salary range, and the amount and length of time of the salary reduction will be specified in the Notice of Intended Discipline. The salary may be reduced either for a specified period of time or until the condition which caused the salary reduction has been corrected. The employee may appeal this action, including the amount and the length of time, to the Civil Service Commission according to the same rules as apply to other formal disciplinary appeals.

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27.4 ~~No provisions of this Article shall be subject to the grievance procedures of this Agreement. The appeal process for any disciplinary action shall only be those described in the San Jose Municipal Code and City of San Jose Discipline Policy in the City Policy Manual and are not~~ be subject to appeal through the grievance procedure of this Agreement.

27.5 Police Department Employees. Disciplinary actions and internal investigations involving non-sworn employees who are subject to the Police Department Duty Manual shall be governed consistent with the rules applicable to sworn members of the Police Department, including, but not limited to the following:

27.5.1 In the event the City determines that discipline may be imposed, it shall complete its investigation and notify the police employee and the Union of its proposed disciplinary action within one year of the discovery of the act, omission, or other misconduct.

27.5.2 A Documented Oral Counseling (DOC) may be appealed under this section to the level of the Assistant Chief of Police. However, should a DOC be the result of the Assistant Chief having reduced a higher form of discipline to a DOC with which the affected employee is still dissatisfied, such DOC may be appealed to the level of the Chief of Police.

27.5.3 Letters of Reprimand (LORs) may be appealed to the City Manager level.

27.5.4 Nothing herein constitutes a waiver of rights of employees otherwise granted by law (e.g., the Meyers-Milias-Brown Act, Government Code Sections 3500, et seq., and the Public Safety Officers Procedural Bill of Rights Act, Government Code Sections 3300, et. seq.).

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AFSCME COUNTER PROPOSAL – VACATION LEAVE

Proposed MEF language:

ARTICLE 10 LEAVES

10.2.2 Vacation Leave. Use of accrued vacation or personal leave is subject to the advanced approval of the Department Director or designee. Any and all leaves granted pursuant to this Article shall be granted at such time or times as will not reduce the number of employees below that which is reasonably necessary for the efficient conduct of the public business of such department, except no employee who is authorized to take a leave for vacation purposes shall be required to commence such leave at a time other than the beginning of a work week, unless the employee elects or consents to commence such leave at another and different time. **Subject to the above provisions, preference of vacation leave timing in any calendar year shall be determined by the relative length of time served by each employee in the classification in which he/she is employed in a department of the City Government and by the length of time during which such employee has worked on any shift, if more than one shift is worked by employee in such classification.** Employees shall submit written requests for all vacation leave in advance and as early as practical. Written response to the leave request will be provided back to the employee within ten (10) working days of the receipt of the written request. **If employees do not receive a written response within ten (10) working days, the vacation leave shall be considered approved.** Nothing in this section shall interfere with an established vacation scheduling procedure.

Proposed CEO language:

ARTICLE 17 VACATION AND PERSONAL LEAVE

17.2 Vacation Leave. Use of accrued vacation or personal leave is subject to the advance approval of the Department Director or designee. Any and all leaves granted pursuant to this Article shall be granted at such time or times as will not reduce the number of employees below that which is reasonably necessary for the efficient conduct of the public business of such department, except no employee who is authorized to take a leave for vacation purposes shall be required to commence such leave at a time other than the beginning of a work week, unless he/she elects or consents to commence such leave at another and different time. Subject to the above provisions, preference of vacation leave timing in any calendar year shall be determined by the relative length of time served by each employee in the classification in which he/she is employed in a department of the City Government and by the length of time during which such employee has worked on any shift, if more than one shift is worked by employee in such classification. Employees shall submit written requests for all vacation leave in advance and as early as practical. Written response to the leave request will be provided back to the employee within ten

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(10) working days of the receipt of the written requests. **If employees do not receive a written response within ten (10) working days, the vacation leave shall be considered approved.** Nothing in this section shall interfere with an established vacation scheduling procedure.

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AFSCME PROPOSAL – UNION RIGHTS

Proposed MEF Language:

ARTICLE 6 UNION RIGHTS

6.6 Bulletin Board Information Posting

6.6.1 Recognized employee organizations may use designated portions of City bulletin boards in departments, which have employees in the representation units for which the Union is recognized **and may use the City's intranet Employee News Network.**

6.6.2 Subject to the provisions contained herein, the following types of Union notices and announcements listed below may be posted on the bulletin boards **and the City's intranet Employee News Network:**

6.6.2.1 Meetings, elections, welfare, recreational and social affairs and such other notices as may be mutually agreed upon between the Union and the Municipal Employee Relations Officer or designee.

6.6.3 All material shall identify the Union responsible for its posting. Copies of all material to be posted must be filed with the Municipal Employee Relations Officer or designee who shall have the sole and exclusive right to order the removal of any objectionable material.

6.6.4 The Municipal Employee Relations Officer or designee shall notify the Union of any material ordered removed. The Union shall be given the opportunity to revise the material to delete the objectionable section or sections.

6.6.5 The City reserves the right to determine where the bulletin boards shall be placed and what portion of such bulletin boards are to be allocated to employee organizations.

6.6.6 Failure of the Union to abide by the provisions of this Article shall result in the forfeiture of the Union's right to have materials posted on City bulletin boards. The City agrees it will not exercise its rights provided herein in an arbitrary and capricious manner.

6.6.7 Elected Union officials shall have the right to utilize the City of San Jose's electronic mail system to make general announcements and inform union members of union meetings and events.

6.6.8 Correspondence from the City to the Union shall be in a timely manner. When the Union requests information from the City, any Human Resources staff, and/or Office of Employee Relations, the time to respond shall be no more than ten (10) working days, unless extended by mutual agreement.

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6.7 Advance Notice

6.7.1 Whenever the City **considers** changes **to** work rules or work place policies, or **considers** issues **issuing** new work rules or work place policies, the Union will be given written notice at least ten (10) working days, absent emergency, before the effective date of the rule or policy. This notice is provided in order that the Union may discuss the rule or policy with the City before they become effective if the Union so requests.

6.7.2 In cases of emergency when the City Council, City Manager or Department Director determines that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice, City management shall provide such notice at the earliest practical time.

Proposed CEO Language:

ARTICLE 15 ~~BULLETIN BOARDS~~ INFORMATION POSTING

15.1 Recognized employee organizations may use designated portions of City bulletin boards in departments which have employees in the representation units for which the Employee Organization is recognized **and may use the City's intranet Employee News Network.**

15.2 Subject to the provisions contained herein, the following types of Employee Organization notices and announcements listed below may be posted on the bulletin boards **and may use the City's intranet Employee News Network:**

15.2.1 Meetings, elections, welfare, recreational and social affairs and such other notices as may be mutually agreed upon between the Employee Organization and the Municipal Employee Relations Officer.

15.3 All material shall identify the Employee Organization responsible for its posting. Copies of all material to be posted must be filed with the Municipal Employee Relations Officer who shall have the sole and exclusive right to order the removal of any objectionable material.

15.4 The Municipal Employee Relations Officer shall notify the Employee Organization of any material ordered removed. The Employee Organization shall be given the opportunity to revise the material to delete the objectionable section or sections.

15.5 The City reserves the right to determine where the bulletin boards shall be placed and what portion of such bulletin boards are to be allocated to employee organizations.

15.6 Failure of the Employee Organization to abide by the provisions of this Article shall result in the forfeiture of the Employee Organization's right to have materials posted on City bulletin boards. The City agrees it will not exercise its rights provided herein in an arbitrary and capricious manner.

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- 15.7 Elected Union officials shall have the right to utilize the City of San Jose's electronic mail system to make general announcements and inform union members of union meetings and events.**
- 15.8 Correspondence from the City to the Union shall be in a timely manner. When the Union requests information from the City, any Human Resources staff, and/or Office of Employee Relations the time to respond shall be no more than ten (10) working days, unless extended by mutual agreement.**

ARTICLE 37 ADVANCE NOTICE

- 37.1 Except in cases of emergency, advance written notice shall be given to the Union affected by any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation **under consideration or** proposed to be adopted by the City Council, any board or commission, **committee**, or department, and shall be given ten (10) working days to respond prior to implementation.
- 37.2 In cases of emergency when the City Council, City Manager or Department Director determines that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice, City management shall provide such notice at the earliest practical time.

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AFSCME PROPOSAL – ANNUAL AND SPECIAL PERFORMANCE EVALUATION

Proposed MEF language:

ARTICLE 17 ANNUAL AND SPECIAL PERFORMANCE EVALUATION

- 17.1 The City of San Jose Non-Management Performance Program Policy provides guidelines for evaluating the work performance of non-management employees.
- 17.2 Key Element Review. If the employee formally receives an overall performance rating of meets standard on either an annual or special performance evaluation, but receives a below meets standard in an individual key element rating, the employee may request a review of that individual key element by the Department Director or designee. The employee must submit a written request to the Director or designee specifying the reasons for such request, within thirty (30) calendar days from the date the employee received the final performance appraisal. The Director or designee shall look into the request and provide a written response to the employee within thirty (30) calendar days of receipt. The written response of the Director or designee shall be final and binding.
- 17.3 Overall Rating Appeal. If the employee formally receives an overall performance rating that is below meets standard on either an annual or special performance evaluation, the employee may appeal the rating. Such appeal shall be made to the Department Director or designee within thirty (30) calendar days from the date the employee receives the final performance appraisal. The Director or designee shall look into the appeal request and provide a written response to the employee within thirty (30) calendar days of receipt of appeal or meeting, if one is held. If the employee is dissatisfied with the decision of the Director or designee, the employee may, within thirty (30) calendar days from the Director's or designee's response, request a hearing with the City Manager or designee. Such request shall be in writing and shall include the reason(s) the employee is not satisfied with the decisions previously rendered.
- 17.4 The City Manager, or designee, shall hold a hearing within a reasonable time, and within twenty (20) calendar days of the hearing shall inform the employee of the decision. The decision of the City Manager, or designee, shall be final. This will be the only appeal process applicable to review a performance appraisal. The employee shall have the right to Union representation at the hearing with the Department Director, City Manager or designees.
- 17.5 If the employee formally receives an overall performance rating that is at or above "meets standard" on either an annual or special performance evaluation and is not satisfied with the appraisal, the employee may write a rebuttal within thirty (30) calendar days from the date the employee receives the final performance appraisal. The rebuttal, along with the performance appraisal, will be included in the employee's personnel file. The rebuttal may be in response to the entire appraisal or any particular section(s).

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17.6 If the employee indicates to their supervisor of the employee's intent to appeal or rebut the evaluation, the employee may request and receive a copy of the evaluation.

17.7 Employee Service and Performance Pay Program. Eligible employees who have achieved an overall appraisal rating of "Above Standard" or above shall receive a Performance Incentive of sixteen hours Compensatory Time Off.

17.7.1 Eligibility. Full-time benefited employees who have accrued 10 years or more of service in the same job classification during the appraisal period shall be eligible to receive the Performance Incentive.

17.7.2 Appraisal Period. The appraisal period will run from July 1 through June 30 for eligible employees. Appraisals will be due October 1st of each year.

17.7.3 Appeal. If an employee who is eligible for the Employee Service and Performance Pay Program formally receives an overall performance rating of "meeting standard" the employee may request a review by the Department Director or designee. The employee must submit a written request to the Director or designee specifying the reasons for such request, within thirty (30) calendar days from the date the employee received the final performance appraisal. The Director or designee shall look into the request and provide a written response to the employee within thirty (30) calendar days of receipt. The written response of the Director or designee shall be final and binding.

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AFSCME PROPOSAL – WORKING IN A HIGHER CLASSIFICATION

Proposed MEF language:

12.7 Working in a Higher Classification. Upon specific assignment by the Department Director, or designee, with prior written approval, a full-time or part-time employee may be required to perform the duties of a full-time or benefited part-time position in a higher classification. Such assignments may be made to existing authorized positions which are not actively occupied due to the temporary absence of the regularly appointed employee or a vacant position. Except in exigent circumstances, the City will provide the Union with advance notice of the employee assignment to a higher classification as soon as possible, but no later than one (1) pay period prior to the assignment. Whenever possible, the notice shall include the expected length of the employee assignment to a higher classification. During the assignment to a higher classification, employment in the higher classification shall be subject to all of the provisions of the current MEF Memorandum of Agreement. Assignments to a higher classification due to a vacancy shall not exceed six (6) months. The City shall provide the Union with notice of the termination date for the employee assignment to the specific higher class assignment.

12.7.1 Employees specifically assigned to duties of a higher classification shall be compensated at the rate in the salary range of the higher class which is at least one salary rate (step) **least 5%** higher in the salary range schedule than the rate received by the employee in the employee's present class. The employee shall not receive any compensation, however, unless the assignment is for a minimum of twenty-four (24) cumulative work hours within one pay period and a minimum of four (4) consecutive work hours within each work day. In the event the assignment is for a minimum of twenty-four (24) cumulative work hours within one (1) pay period and a minimum of four (4) consecutive work hours within one (1) work day, the employee shall be compensated at the appropriate rate for all the eligible hours worked in the higher class within the pay period.

Proposed CEO language:

7.3 Working in a Higher Classification

7.3.1 Upon specific assignment by the Department Director, or his/her designated representative, with prior written approval, a full-time or part-time employee may be required to perform the duties of a full-time or benefited part-time position in a higher classification. Such assignments may be made to existing authorized positions that are not actively occupied due to the temporary absence of the regularly appointed employee or vacant positions. Except in exigent circumstances, the City will provide the Union with advance notice of the employee assignment to a higher classification as soon as possible, but no later than one (1) pay period prior to the assignment. Whenever possible, the notice shall include the expected length of

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the employee assignment to a higher classification. During the assignment to a higher classification, employment in the higher classification shall be subject to all of the provisions of the current CEO Memorandum of Agreement. Assignments to a higher classification due to a vacancy shall not exceed six (6) months. Once an employee reaches the six (6) month maximum in a specific higher class assignment due to a vacancy, the employee shall not be eligible to serve in the same higher class assignment for at least six (6) months and shall return to his/her regular assignment. **The City shall provide the Union with notice of the termination date for the employee assignment to the specific higher class assignment.**

7.3.1.1 By mutual agreement between the City and the Employee Organization, an employee assigned to work in a higher classification may be extended in his/her specific assignment past the aforementioned six (6) month limitation. **However, the assignment to a higher classification shall not extend past the fiscal year in which the assignment to a higher classification was made, or exceed twelve (12) months.**

7.3.2 Employees specifically assigned to duties of a higher classification shall be compensated at the rate in the salary range of the higher class which is at least one (1) salary rate (step) **least 5%** higher in the salary range schedule than the rate received by the employee in the employee's present class. The employee shall not receive any compensation, however, unless the assignment is for a minimum of twenty-four (24) cumulative work hours within one (1) pay period and a minimum of four (4) consecutive work hours within one (1) day. In the event the assignment is for a minimum of twenty-four (24) cumulative work hours within one (1) pay period and a minimum of four (4) consecutive work hours within one (1) day, the employee shall be compensated at the appropriate rate for all the eligible hours worked in the higher class within the pay period.

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AFSCME PROPOSAL – CALL BACK AND SPECIAL PAY

Proposed MEF language:

ARTICLE 12 WAGES AND SPECIAL PAY

- 12.8 Call Back. An employee who is called back to work in response to an emergency or other unforeseen circumstance shall be credited for the time worked, or for three (3) hours, whichever is greater, at the appropriate rate. This section shall apply on either a workday after the employee has departed from their place of employment or on a day off. It shall not apply to scheduled overtime or during a regular shift.

If an employee is scheduled for two (2) or more consecutive standby shifts, call back pay shall be credited separately for each shift of standby, if the employee is required to return to work in a subsequent shift. This applies, even if they had not previously received call back pay for the first shift of standby assigned.

- 12.9 Standby Pay. Employees who are required to perform standby duty shall be credited with one hour compensation at the appropriate rate for each eight (8) hour shift or portion thereof the employee performs standby duty. In the event the employee is called back to work, the employee shall be entitled to the compensation provided by Section 12.8 above, in lieu of the one hour of standby compensation for that eight (8) hour shift.

If an employee is called back to work during a second consecutive hour of standby, they are entitled to the compensation provided by section 12.8 above, in lieu of the one (1) hour of standby compensation for that eight (8) hour shift.

If an employee is called back to work in only one of the consecutive standby shifts assigned then standby duty shall be credited with one (1) hour of compensation at the appropriate rate for each eight (8) hour shift, regardless if the employee was called back for one (1) shift of standby.

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AFSCME PROPOSAL – LAYOFF

Proposed MEF language:

ARTICLE 11 LAYOFF

11.1 As used in this Article, the following words and phrases shall be defined as follows:

11.1.1 Seniority as defined in the Layoff and Reassignment Policy contained in the City Policy Manual.

11.1.2 A lower class shall mean a class with a lower salary range.

11.1.3 A position in a lateral class shall mean a position in a class with the same salary range.

11.1.4 A position in a higher class shall mean a position in a class with a higher salary range.

11.2 The City will notify the Union within three (3) working days prior to the posting of any seniority lists for each and every classification pertaining to any employee(s) represented by the Union.

11.23 Order of Layoff. When one or more employees in the same class in a City department are to be laid off for lack of work, purposes of economy, curtailment of positions or other reason, the order of layoff shall be as follows:

11.23.1 Provisional employees in the order to be determined by the appointing authority.

11.23.2 Probationary employees in the order to be determined by the appointing authority.

11.23.3 Permanent employees in inverse order of seniority within the classification being reduced, or in a higher class.

11.3.3.1 If two or more permanent employees have the same class seniority, then ranking is based on citywide seniority.

11.3.3.2 If two or more permanent employees have the same class and same citywide seniority, then ranking is based on the scores on the eligible list that was used for their original hiring or employment authorization scores. In the absence of eligible list scores or authorization scores, ranking shall be determined as follows:

1. The sum of the last four (4) digits of the employee's social security number, with the lowest sum being the least senior on the list and following in

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successive order to the highest sum total being the most senior on the established list.

2. If the sum total of the last four (4) digits of the employee's social security number should result in another tie, a random draw shall be conducted of ONLY the employees with the sum total tie. The first drawn name would be the least senior of the secondary tie and subsequent draw (or draws) continuing until all secondary tie placements on the list are filled.

3. In the event there is an exemption request submitted by a department or manager, the tie-breaker process shall be used to establish the class seniority list prior to any exemption request being considered or granted, so the list can accurately reflect the appropriate order prior to any decisions.

11.23.4 Permanent employees shall be given every opportunity for transfer to other departments when layoff is pending.

11.34 Notice of Layoff. Employees subject to the provisions of this Article shall, wherever possible, be given at least thirty (30) calendar days notice in writing prior to the effective date of layoff. The appropriate Unions shall receive concurrent notice, and upon written request within seven (7) calendar days after the notice is given shall be afforded an opportunity to meet with the appropriate City representatives to discuss the circumstances necessitating the layoff and any proposed alternatives to such layoff.

11.45 Reassignment in Lieu of Layoff. In the event of layoff, any employee so affected may elect to:

11.45.1 Accept a position in a lateral or lower class in which the employee has previously served, or a position in a lateral or lower class within the series containing the class from which the employee is being laid off, provided the employee is otherwise qualified and is more senior than the least senior employee in such lateral or lower class.

11.45.2 Accept a vacant position in a lateral or lower class for which the employee has the necessary education, experience, and training as determined by the Director of Human Resources or designee. An employee may also accept a vacant position in a higher class, provided the employee has held permanent status in such higher class, and further provided that the employee's removal from the higher class was voluntary and occurred during the employee's most recent period of employment. Adverse decisions of the Director regarding necessary education, experience, and training shall be subject to the grievance procedure including arbitration. The employee may file the grievance at Step III within ten working days of the date of being notified of the adverse decision.

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- 11.4~~5~~.3 Any employee entitled to an option noted above, which involves assignment to a lower classification, may elect to be placed on layoff in lieu of accepting such assignment to the lower class. In the event the employee elects to be placed on layoff, such employee will only be recalled to the classification from which the employee elected to be placed on layoff or to any higher classification to which the employee may be entitled pursuant to the provisions of this Article.
- 11.5~~6~~ Except as otherwise provided herein, no employee shall be entitled to a position in a higher class as a result of the application of the provisions of this Article.
- 11.6~~7~~ Layoff Reinstatement Eligible List
- 11.6~~7~~.1 The names of such persons who are laid off or who elect reassignment in lieu of layoff in accordance with the provisions of Section 11.5 of this Article shall be placed upon a Reinstatement Eligible List in inverse order of seniority, i.e., the person with the greatest seniority on the Reinstatement Eligible List for the classes affected shall be offered reinstatement when a vacancy exists in the affected class. In the event the person refuses the offer of reinstatement, such person's name shall be removed from the Reinstatement Eligible List, unless such person has reinstatement rights under the provisions of this Article to a higher class than the one in which the reinstatement is being refused.
- 11.6~~7~~.2 In the event an employee accepts reinstatement to a lower class to which the employee is entitled, such person's name shall remain on the Reinstatement Eligible List for reinstatement to a lateral class, provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent layoff.
- 11.6~~7~~.3 Any person who is reinstated to a class which is the highest class to which they would have been entitled at the time of the layoff shall have the employee's name removed from the Reinstatement Eligible List.
- 11.6~~7~~.4 In the event a person on layoff cannot be contacted by the City through usual and customary channels within ten (10) working days, such person's name shall be removed from the Reinstatement Eligible List, providing, however, that such person within the three-year period specified herein may request that his/her name be replaced on the Reinstatement Eligible List and such person's name may, in the sole discretion of the Director of Human Resources, or designee, be returned to the Reinstatement Eligible List.
- 11.6~~7~~.5 In no event shall the names of any person laid off pursuant to the provisions of this Article remain on a Reinstatement Eligible List for a period longer than three years from the effective date of such person's most recent layoff.

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11.78 Upon reinstatement to any classification to which the employee is entitled pursuant to the provisions of this Article, all benefits acquired by the employee prior to layoff shall also be reinstated. An employee shall not receive credit for time spent on layoff in computing time for any benefit entitlement.

11.89 Part-Time Employees and Layoffs

11.89.1 Part-time benefited employees. When identifying part-time benefited positions for elimination, Departments shall consider the following factors in determining the employee(s) to be displaced:

- Seniority (as determined by total hours worked in current classification) and;
- Department and/or program needs inclusive of special skills

11.89.1.1 Departments shall make available a written explanation of the factors and methods applied to determine displacements for their department and a written explanation to an affected employee upon request.

11.89.1.2 Employees impacted by the displacements may appeal the decision to the Director of Human Resources. The written response of the Director shall be final and binding.

11.89.1.3 Any employees displaced by layoffs may elect to be placed in the part-time employee rehire pool and if selected for rehire in their former classification may return through the non-competitive process.

11.10 Exemptions from Layoff. Within three (3) working days of the Director of Human Resources and/or the Office of the City Manager receiving a Department Director's memo requesting an exemption from bumping or layoff during the layoff process for a position filled by an employee represented by the Union, the City shall provide a copy of the memo to the Union. The Union may, within five (5) working days of receipt of the Department Director's memo, submit a written objection to the request for exemption from bumping or layoff during the layoff process, for consideration by the City. The Union shall also be afforded an opportunity to meet with the Department Director (or designee) and appointing authority, within three (3) working days of submitting its written objections, for an explanation of the Department's request for exemption. The City will notify the Union of any decisions to grant exemptions from the bumping process for positions filled by employees represented by the Union within three (3) working days of receipt of the written objection or within three (3) working days of the meeting with the Department Director/designee and appointing authority, whichever is later. If the Union disagrees with the decision, the layoff dispute resolution may be invoked to resolve the matter.

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Move and incorporate Exhibit III – Process for Layoff Dispute Resolutions into Article 11 - Layoff:

11.11 Process for Layoff Dispute Resolutions.

In lieu of the traditional process for handling grievances, the following process is recommended for handling specified disputes related to the layoff process.

11.11.1 Step One: Research and Discovery

1. Employee contacts Human Resources regarding concern. Employee fills out a form describing issue and requesting research.
2. Human Resources researches concern, and, based on data, makes a decision.

11.11.2 Step Two: Review and Resolution

If the employee is not satisfied with Human Resources' ruling, and the issue is appealable through the dispute process, the employee can request an additional review by the Director of Employee Relations or designee and a Union Representative (Business Agent or high ranking Officer).

1. Employee contacts their Union regarding the concern.
2. The Union notifies Employee Relations of the situation.
3. Employee Relations schedules a meeting date in Human Resources to review documents in question.
4. The Director of Employee Relations or designee, Union Representative and employee meet in the Human Resources Department to review documents. An A Human Resources representative is available for background and information.
5. Based on data, and after discussion and consultation the Union representative, the Director of Employee Relations or designee makes a bench decision. If the Union does not agree with the decision, the issue can continue through the dispute process and appeal may be filed to Step 3.

11.11.3 Step Three: Appeal Process

If the employee is still not satisfied, and the issue is appealable through the dispute process, the employee can appeal to a Review Board. The Review Board is comprised of:

- Director of Employee Relations or one designee.
- One Union Representative - Business Agent or high ranking Officer (one from each affected Union).
- One Outside Neutral Party (same individual for all cases to ensure consistency).

The outside neutral party will decide the final ruling only if the Director of Employee Relations or designee and Union Representative have opposing positions. All Review Board rulings are final.

1. Employee contacts Union regarding appeal.



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2. Union notifies Employee Relations of situation.
3. Employee Relations schedules hearing date with outside neutral party.
4. Employee presents their case to the Review Board.
5. Human Resources presents their case to the Review Board.
6. Review Board hears testimony, reviews document, and makes a final bench decision.

11.11.4 Deadlines

11.11.4.1 Step I Request for Step 1: An employee has ~~five (5)~~ **ten (10)** working days, following receipt of a layoff notice, to complete a request for information form in Human Resources. This action will result in Step 1, Research and Discovery.

11.11.4.1.1 Response to Request: Human Resources has three (3) days, from the date of the request, to investigate records and respond to the employee.

11.11.4.2 Step II Request for Step 2: An employee has two (2) working days, following Step I response from Human Resources, to file a request for Step 2 with Employee Relations.

11.11.4.2.1 Response to Request: Employee Relations has three (3) working days, from the date of the request, to schedule the review meeting with Human Resources, a Union representative and the employee.

11.11.4.3 Step III Request for Step 3: An employee has three (3) working days, following the Step II decision, to file a request for Step 3 with Employee Relations.

11.11.4.3.1 Response to Request: Employee Relations has three (3) working days, from the date of the request, to schedule a hearing date with the Review Board.

Proposed CEO language:

ARTICLE 14 LAYOFF

14.1 The City will notify the Union within three (3) working days prior to the posting of any seniority lists for each and every classification pertaining to any employee(s) represented by the Union.

14.12 Order of Layoff

When one (1) or more employees in the same class in a City department are to be laid off for lack of work, purposes of economy, curtailment of positions or other reason, the order of layoff shall be as follows:

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- 14.12.1 Provisional employees in the order to be determined by the appointing authority.
- 14.12.2 Probationary employees in the order to be determined by the appointing authority.
- 14.12.3 Permanent employees in inverse order of seniority within the classification being reduced, or in a higher class.

14.2.3.1 If two or more permanent employees have the same class seniority, then ranking is based on citywide seniority.

14.2.3.2 If two or more permanent employees have the same class and same citywide seniority, then ranking is based on the scores on the eligible list that was used for their original hiring or employment authorization scores. In the absence of eligible list scores or authorization scores, ranking shall be determined as follows:

- 1. The sum of the last four (4) digits of the employee's social security number, with the lowest sum being the least senior on the list and following in successive order to the highest sum total being the most senior on the established list.**
- 2. If the sum total of the last four (4) digits of the employee's social security number should result in another tie, a random draw shall be conducted of ONLY the employees with the sum total tie. The first drawn name would be the least senior of the secondary tie and subsequent draw (or draws) continuing until all secondary tie placements on the list are filled.**
- 3. In the event there is an exemption request submitted by a department or manager, the tie-breaker process shall be used to establish the class seniority list prior to any exemption request being considered or granted, so the list can accurately reflect the appropriate order prior to any decisions.**

- 14.12.4 Permanent employees shall be given every opportunity for transfer to other departments when layoff is pending.

14.23 Notice of Layoff

Employees subject to the provisions of this Article shall, wherever possible, be given at least thirty (30) calendar days notice in writing prior to the effective date of layoff. The appropriate Employee Organizations **Union** shall receive concurrent notice, and upon written request within seven (7) calendar days after the notice is given shall be afforded an opportunity to meet with the appropriate City representatives to discuss the circumstances necessitating the layoff and any proposed alternatives to such layoff.

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14.34 Reassignment in Lieu of Layoff

In the event of layoff, any employee so affected may elect to:

14.34.1 Accept a position in a lateral or lower class in which he/she has previously served, or a position in a lateral or lower class within the series containing the class from which the employee is being laid off, provided he/she is otherwise qualified and is more senior than the least senior employee in such lateral or lower class.

14.34.2 Accept a vacant position in a lateral or lower class for which he/she has the necessary education, experience, and training as determined by the Director of Human Resources. An employee may also accept a vacant position in a higher class, provided he/she has held permanent status in such higher class, and further provided that the employee's removal from the higher class was voluntary and occurred during his/her most recent period of employment. Adverse decisions of the Director regarding necessary education, experience, and training shall be subject to the grievance procedure including arbitration. The employee may file the grievance at Step III within ten (10) working days of the date of being notified of the adverse decision.

14.35.2 Any employee entitled to an option noted above, which involves assignment to a lower classification, may elect to be placed on layoff in lieu of accepting such assignment to the lower class. In the event the employee elects to be placed on layoff, such employee will only be recalled to the classification from which the employee elected to be placed on layoff or to any higher classification to which the employee may be entitled pursuant to the provisions of this Article.

14.45 As used in this Article, the following words and phrases shall be defined as follows:

14.45.1 Except as otherwise provided above, seniority shall be defined as the length of continuous paid employment within any permanent class or classes within the classified service of the City. Seniority shall be retained, but shall not accrue, during any period of leave without pay, except for authorized military leave.

14.45.2 A lower class shall mean a class with a lower salary range.

14.45.3 A position in a lateral class shall mean a position in a class with the same salary range.

14.45.4 A position in a higher class shall mean a position in a class with a higher salary range.

14.56 Except as otherwise provided herein, no employee shall be entitled to a position in a higher class as a result of the application of the provisions of this Article.

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14.67 Layoff Reinstatement Eligible List

14.67.1 The names of such persons who are laid off or who elect reassignment in lieu of layoff in accordance with the provisions of Section 14.3 of this Article shall be placed upon a Reinstatement Eligible List in inverse order of seniority, i.e., the person with the greatest seniority on the Reinstatement Eligible List for the classes affected shall be offered reinstatement when a vacancy exists in the affected class. In the event the person refuses the offer of reinstatement, such person's name shall be removed from the Reinstatement Eligible List, unless such person has reinstatement rights under the provisions of this Article to a higher class than the one in which the reinstatement is being refused.

14.67.2 In the event an employee accepts reinstatement to a lower class to which he/she is entitled, such person's name shall remain on the Reinstatement Eligible List for reinstatement to a lateral class, provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent layoff.

14.67.3 Any person who is reinstated to a class which is the highest class to which he/she would have been entitled at the time of the layoff shall have his/her name removed from the Reinstatement Eligible List.

14.67.4 In the event a person on layoff cannot be contacted by the City through usual and customary channels within ten (10) working days, such person's name shall be removed from the Reinstatement Eligible List, providing, however, that such person within the three (3) year period specified herein may request that his/her name be replaced on the Reinstatement Eligible List and such person's name may, in the sole discretion of the Director, be returned to the Reinstatement Eligible List.

14.67.5 In no event shall the names of any person laid off pursuant to the provisions of this Article remain on a Reinstatement Eligible List for a period longer than three (3) years from the effective date of such person's most recent layoff.

14.78 Upon reinstatement to any classification to which the employee is entitled pursuant to the provisions of this Article, all benefits acquired by the employee prior to his/her layoff shall also be reinstated. An employee shall not receive credit for time spent on layoff in computing time for any benefit entitlement.

14.9 Exemptions from Layoff. Within three (3) working days of the Director of Human Resources and/or the Office of the City Manager receiving a Department Director's memo requesting an exemption from bumping or layoff during the layoff process for a position filled by an employee represented by the Union, the City shall provide a copy of the memo to the Union. The Union may, within five (5) working days of receipt of the Department Director's memo, submit a written objection to the

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request for exemption from bumping or layoff during the layoff process, for consideration by the City. The Union shall also be afforded an opportunity to meet with the Department Director (or designee) and appointing authority, within three (3) working days of submitting its written objections, for an explanation of the Department's request for exemption. The City will notify the Union of any decisions to grant exemptions from the bumping process for positions filled by employees represented by the Union within three (3) working days of receipt of the written objection or within three (3) working days of the meeting with the Department Director/designee and appointing authority, whichever is later. If the Union disagrees with the decision, the layoff dispute resolution may be invoked to resolve the matter.

14.10 Process for Layoff Dispute Resolutions.

In lieu of the traditional process for handling grievances, the following process is recommended for handling specified disputes related to the layoff process.

14.10.1 Step One: Research and Discovery

1. Employee contacts Human Resources regarding concern. Employee fills out a form describing issue and requesting research.
2. Human Resources researches concern, and, based on data, makes a decision.

14.10.2 Step Two: Review and Resolution

If the employee is not satisfied with Human Resources' ruling, and the issue is appealable through the dispute process, the employee can request an additional review by the Director of Employee Relations or designee and a Union Representative (Business Agent or high ranking Officer).

1. Employee contacts their Union regarding the concern.
2. The Union notifies Employee Relations of the situation.
3. Employee Relations schedules a meeting date in Human Resources to review documents in question.
4. The Director of Employee Relations or designee, Union Representative and employee meet in the Human Resources Department to review documents. A Human Resources representative is available for background and information.
5. Based on data, and after discussion and consultation the Union representative, the Director of Employee Relations or designee makes a bench decision. If the Union does not agree with the decision, the issue can continue through the dispute process and appeal may be filed to Step 3.

14.10.3 Step Three: Appeal Process

If the employee is still not satisfied, and the issue is appealable through the dispute process, the employee can appeal to a Review Board. The Review Board is comprised of:

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- Director of Employee Relations or one designee.
- One Union Representative - Business Agent or high ranking Officer (one from each affected Union).
- One Outside Neutral Party (same individual for all cases to ensure consistency).

The outside neutral party will decide the final ruling only if the Director of Employee Relations or designee and Union Representative have opposing positions. All Review Board rulings are final.

1. Employee contacts Union regarding appeal.
2. Union notifies Employee Relations of situation.
3. Employee Relations schedules hearing date with outside neutral party.
4. Employee presents their case to the Review Board.
5. Human Resources presents their case to the Review Board.
6. Review Board hears testimony, reviews document, and makes a final bench decision.

14.10.4 Deadlines

14.10.4.1 Step I Request for Step 1: An employee has ten (10) working days, following receipt of a layoff notice, to complete a request for information form in Human Resources. This action will result in Step 1, Research and Discovery.

14.10.4.1.1 Response to Request: Human Resources has three (3) days, from the date of the request, to investigate records and respond to the employee.

14.10.4.2 Step II Request for Step 2: An employee has two (2) working days, following Step I response from Human Resources, to file a request for Step 2 with Employee Relations.

14.10.4.2.1 Response to Request: Employee Relations has three (3) working days, from the date of the request, to schedule the review meeting with Human Resources, a Union representative and the employee.

14.10.4.3 Step III Request for Step 3: An employee has three (3) working days, following the Step II decision, to file a request for Step 3 with Employee Relations.

14.10.4.3.1 Response to Request: Employee Relations has three (3) working days, from the date of the request, to schedule a hearing date with the Review Board.

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AFSCME – SUBSIDY FOR PUBLIC TRANSIT

Proposed MEF language:

13.12 Subsidy for Public Transit. Effective January 1, 2012, the City will pay fifty percent (50%) of the discounted Public Transit Voucher cost and the employee will pay fifty percent (50%) of the discounted Public Transit Voucher cost. Employees may purchase two additional public transit subsidies for their dependents at one hundred percent (100%) of the discounted Public Transit Subsidy cost. Employees who elect to participate must register annually during open enrollment. The payroll deduction will be automatic the first pay period after open enrollment.

Proposed CEO language:

7.24 Subsidy for Public Transit. Effective January 1, 2012, the City will pay fifty percent (50%) of the discounted Public Transit Voucher cost and the employee will pay fifty percent (50%) of the discounted Public Transit Voucher cost. Employees may purchase two additional public transit subsidies for their dependents at one hundred percent (100%) of the discounted Public Transit Subsidy cost. Employees who elect to participate must register annually during open enrollment. The payroll deduction will be automatic the first pay period after open enrollment.

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AFSCME PROPOSAL – FULL UNDERSTANDING, MODIFICATION AND WAIVER

- Include MEF Side Letter Agreement on Library Assistants dated 01/10/11
- Include MEF Side Letter Agreement on Reclassification Process dated 01/26/09. This shall be added as Article 23 Reclassification in the MEF contract with dates concurrent with the term of the MEF contract.
- Include CEO Side Letter Agreement on Reallocation Process dated 12/10/09. This shall be added as Article 38 Reallocation Process with the date January 1, 2011.
- Amend any dates contained in the MOA to comply with the new period of the MOA.

The Mercury News

The Newspaper of Silicon Valley

Opinion: San Jose pension crisis is imaginary

April 17, 2011

We have heard it time and time again from Mayor Chuck Reed and others: San Jose worker pensions are on an unsustainable course. If the trajectory of pension contributions were a straight line, this would be true. However, they are not and it is not. It is time to set the record straight about the imaginary pension crisis in San Jose.

From actuarial reports to unfunded liabilities, pensions can be easily misunderstood. The most important thing to know is that pension funding is cyclical, since the markets in which they invest are volatile.

Presenting pension contributions as being linear instead of cyclical has allowed the city of San Jose to create an extremely inaccurate picture by comparing the peak of one cycle to the trough of the next.

In 2000, retirement plans had just experienced 15-20 percent returns for many years. Contributions were typically below normal levels, plans were well-funded, and actuaries projected low costs for decades. In contrast, the plans of today are climbing out of investment-related deficits, contributions are above normal levels, and projections look dire. Simply put, projected pension costs look very different at these peaks and troughs.

We have seen these cycles before, and will again. As economist Dean Baker pointed out in a recent Center for Economic Policy and Research study, the major driver of current pension shortfalls is the stock market crash in 2007-09. This flies in the face of those whowould suggest that it is caused by ever-increasing or overpromised benefits to employees.

Accordingly, the city's retirement plans are already bouncing back along with the stock market. Near the trough of the financial crisis in 2009, San Jose's federated plan had an unfunded liability of \$1.13

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billion. By 2010, only one year later, the unfunded liability had fallen to \$998 million. Since then, the S&P 500 index has increased 30 percent. We estimate that recovering markets will eliminate nearly half of the unfunded liability during this fiscal year.

In other words, half of the "pension crisis" may have solved itself by June.

The cyclical nature of pension costs has allowed politicians to unfairly target public employees across the nation. The same arguments are being used everywhere, the same comparisons to early 2000 contribution levels, and the same projections of future costs based on figures developed at the trough of the cycle. It sounds very scary, indeed. It is meant to.

The scariest, and most dubious, figure is the city's much-touted \$400 million in contributions by 2015. Much of this figure stems the city's attempt to prefund retiree health care, an issue that is separate from pensions and far more discretionary.

Few governments prefund retiree health care, and even fewer companies do. This is akin to paying for two generations of retiree health care now, and doing so during the worst economic climate in 80 years. The city has lumped in these costs in a deliberate attempt to drive up the numbers and further alarm the public.

There is a real crisis in retirement, but it is not the one being talked about. Retirement security for working people across the country is plummeting, as too many pensions in the private sector have disappeared and the system is increasingly reliant on 401(k)s. A recent article in The Wall Street Journal pointed out that the median household for workers aged 60-62 with a 401(k) account has less than one-quarter of the needed amount.

In San Jose, the attack on city worker pensions is misguided at best and does nothing to further economic recovery. We call upon city leadership to stop conjuring up crises that pit working people against one another and instead focus on finding real budget solutions.

YOLANDA CRUZ works at Martin Luther King Jr. Library and is president of AFSCME MEF, which represents more than 3,500 front-line city workers. She wrote this for this newspaper.